



Travis County Commissioners Court Agenda Request

Meeting Date: March 18, 2014

Prepared By/Phone Number: John Carr, 854-4772

Dept. Head: Roger El Khoury, M.S., P.E., Director, FMD, 854-4579

County Executive: Leslie Browder, Planning and Budget, 854-9106

Sponsoring Court Members: County Judge Samuel T. Biscoe

AGENDA LANGUAGE:

Consider and take appropriate action on license agreement to use the "Old County Jail" in the Heman Marion Sweatt Courthouse to shoot a student film on March 28, April 12 and 13, 2014, with possible makeup dates on April 18, 19 and 20, 2014.

BACKGROUND/SUMMARY OF REQUEST:

The Facilities Management Department (FMD) received a request from Scott Cobb to shoot scenes for a student film he is directing and producing as a University of Texas class project. The tentative title for the film is "Ilyanica". FMD and Ms. Bonner with the County Attorney's office collaborated on the appropriate license which is at Exhibit One. Mr. Cobb has signed the license agreement, provided the required proof of insurance coverage and agreed to provide a check in the amount of \$300 (for three days of filming) within 10 days of approval of this license as specified. If additional days are needed, Mr. Cobb will provide a check for \$100 per day for each additional day required. Mr. Cobb has also agreed to hire off duty FMD security guards or off duty Sheriff's deputies to be with his crew during the entire time they are in the facility.

STAFF RECOMMENDATIONS:

Facilities Management Department recommends approval of the license agreement which will allow the film crew to use the vacant 6th and 7th floors of the HMS Courthouse.

ISSUES AND OPPORTUNITIES:

Ms. Peg Leidtke, Director of Court Management with the Civil District Courts is aware of the requested use and concurs with the recommendation to approve the license agreement. There are no financial or legal issues that would impact approval of this license agreement.

FISCAL IMPACT AND SOURCE OF FUNDING:

Revenue of \$300 to \$600 to cover administrative fees for the license agreement, based on number of days required for the film shoot.

ATTACHMENTS/EXHIBITS:

1. License Agreement
2. Film Synopsis

REQUIRED AUTHORIZATIONS:

Christopher Gilmore, County Attorney's Office

License Agreement

This License Agreement (this "Agreement") is made and entered into by and between Travis County, Texas, a political subdivision of the State of Texas ("County") and Scott Cobb, an enrolled University of Texas film student or faculty member using this License for the creation, production or publication of films within the scope and nature of a class project assigned by an educator of the University of Texas at Austin ("Licensee").

WITNESSETH

THAT WHEREAS, County is the owner of the Heman Marion Sweatt Travis County Courthouse located at 1000 Guadalupe Street, Austin, Texas (the "Property"); and

WHEREAS, Licensee desires to use the Old County Jail (located on the seventh floor of the Courthouse) for the purpose of filming a student short film, with the working title "Ilyanica", and County desires to allow Licensee use of the Property for such purpose; and

WHEREAS, Licensee fully understands both the historical significance and the security considerations of the Property and intends to fully cooperate and take whatever steps are necessary to minimize all impacts upon the Property during Licensee's use and to restore said Property to its original condition after Licensee has completed filming.

NOW, THEREFORE, County and Licensee, in consideration of the mutual promises herein expressed and the compensation herein agreed to be paid, covenant and agree to and with each other as follows:

1.0 GRANT OF LICENSE

1.1 County hereby grants a license to Licensee, its employees, agents, independent producers, contractors, and suppliers to enter, use and by means of film, video, tape or any other method, photograph the interior areas of the Property in connection with the production of a student short film currently entitled "Ilyanica" (the "License").

1.2 Such production, and all exhibition, distribution, advertising, and exploitation products or services created or produced in connection therewith, shall be the sole property of Licensee, without exception and in perpetuity, and may be exploited in all media and markets and in all forms, whether known, unknown, or hereafter

created. The License includes the right to bring onto the Property and to utilize thereon personnel, personal property, materials and equipment, including but not limited to props and temporary sets during the term of the License.

1.3 Licensee agrees to make no structural changes to any portion of the Property licensed hereunder. However, the License allows for superficial preparation to be made to the Property to facilitate Licensee's storyline and production needs as well as the right to use special effects in furtherance of the storyline. Licensee agrees to leave the Property in the same and as good a condition as when it was received, normal wear and tear excepted, as determined by existing County policy.

1.5 Licensee acknowledges and agrees that permission to use the County Property for the purposes described herein may be immediately revoked if the motion picture named above contains any content that, in the opinion of the Travis County Commissioners Court, the Travis County Sheriff, the Facilities Management Department Director, or their designees, is obscene, offensive, defamatory, harassing, malicious or that would reflect adversely on the reputation and dignity of Travis County.

1.6 Licensee acknowledges and agrees that Licensee shall be solely responsible at all times for the actions and the safety of those persons utilizing the Property under this Agreement, including, without limitation, protecting such persons from injury or death and protecting County's property and the property of such persons from loss or damage.

2.0 TERM OF LICENSE

2.1 The License is granted from approximately Friday, March 28, 2014 from no earlier than 6:00 p.m. until Saturday, March 29, 2014 at 2:00 a.m.; Saturday, April 12, 2014 from approximately 12:00 noon until Sunday, April 13, 2014 at 3:00 a.m.; Sunday April 13, 2014 from approximately 12:00 noon and concluding Monday April 14, 2014 at 3:00 a.m. If filming has not been completed, Licensee will notify County of its intent to film Friday, April 18, 2014 from no earlier than 6:00 p.m. until 3:00 a.m. Saturday, April 19, 2014; Saturday, April 19, 2014 from approximately 12:00 noon until Sunday, April 20, 2014 at 3:00 a.m.; Sunday April 20, 2014 from approximately 12:00 noon and concluding Monday April 21, 2014 at 3:00 a.m. provided, however, that such dates are subject to postponement and/or rescheduling due to any cause or reason beyond the control of Licensee or as determined to be necessary by County. In addition, Licensee agrees to take all reasonable measures to minimize noise and any other type of interference with or disruption of normal courthouse business for the duration of the license term.

3.0 PAYMENT TO COUNTY

3.1 In consideration of the License granted hereunder, Licensee shall pay to Travis County the amount of ONE HUNDRED DOLLARS AND NO/100 (\$100.00) per day to cover County's administrative, utilities and related costs.

3.2 In addition, Licensee shall provide, at its own additional expense, and if appropriate given the License scope, traffic control, garbage removal, and security personnel through the employment of the necessary number of off-duty Travis County Sheriff's officers or Facilities Management Department (FMD) security personnel (or other qualified security personnel if approved in advance by the Travis County Facilities Management Director) to be present in the licensed areas during Licensee's use of the Property as reasonably necessary to ensure the safety and integrity of the persons and property brought onto the Property for the purposes authorized under this Agreement.

3.3 Licensee shall pay County the sum set forth in this Section 3.0 within ten (10) days of execution of this Agreement. If there are any expenses incurred by County above the expenses set forth herein, County shall invoice Licensee for the actual costs so incurred, and Licensee shall remit payment to County for the invoice amounts within thirty (30) days of receipt of invoice(s).

4.0 SMOKING

4.1 THERE SHALL BE NO SMOKING IN THE COURTHOUSE AT ANY TIME. LICENSEE AGREES NOT TO USE ANY EQUIPMENT OR MATERIAL THAT IS INTENDED TO PRODUCE AN OPEN FLAME.

5.0 PERMITS

5.1 Licensee shall be solely responsible for the costs and the securing of any permits required by the City of Austin or other local governmental entities for use of the Property under this Agreement.

6.0 USE AND REPAIRS

6.1 Licensee shall not use the Property for any purpose other than that set forth herein. Further, Licensee shall repair or replace any damage to the Property caused by Licensee.

7.0 CONTROL OF TRAVIS COUNTY

7.1 Licensee shall at all times obey the direction and commands of the Travis County Sheriff and the Facilities Management Department Director, or their designated representatives, while on or in the vicinity of the Property.

7.2 Any disregard of the directions, restrictions, rules or regulations referenced in this Section 7 shall be grounds for immediate revocation of the License granted hereunder.

8.0 INDEMNIFICATION

8.1 LICENSEE AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS, AND DEFEND COUNTY, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM ANY AND ALL NEGLIGENCE, LIABILITY, LOSS, COSTS, CLAIMS, INCLUDING ATTORNEYS FEES, OR EXPENSES OF WHATEVER TYPE OR NATURE FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, ARISING IN WHOLE OR IN PART OUT OF ANY AND ALL ACTS OF COMMISSION OR OMISSION OF LICENSEE, ITS AGENTS OR EMPLOYEES, ARISING OUT OF IN CONNECTION WITH THIS AGREEMENT OR LICENSEE'S USE OF THE PROPERTY FOR WHICH A CLAIM, INCLUDING ATTORNEYS FEES, DEMAND, SUIT OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY AGAINST LICENSEE OR COUNTY.

9.0 INSURANCE

9.1 Without in any way limiting the liability of Licensee or its obligations under this Agreement, Licensee agrees to maintain during the term of the License Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$600,000 per occurrence and \$1,000,000 in the aggregate, with Travis County named as an additional insured. Licensee has provided County with a certificate from its carrier evidencing such insurance, which certificate is attached hereto as **Exhibit A** and made a part hereof.

10.0 NON-ASSIGNMENT OF RIGHTS

10.1 Licensee may not assign this Agreement or any portion or right thereof without the prior written consent of County; provided, however, Licensee shall have the right to grant, assign and transfer all or any part of its right, title and interest in the film production, in whole or in part, including all copyrights, rights of publicity, trademarks and all other legal interests and rights.

11.0 AMENDMENTS

11.1 This Agreement may be amended only by written instrument signed by both County and Licensee. IT IS EXPRESSLY ACKNOWLEDGED BY LICENSEE THAT NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO MODIFY OR AMEND THE TERMS OF THIS AGREEMENT UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT OF TRAVIS COUNTY.

12.0 SAFETY

12.1 County reserves the right to prohibit persons from driving on, entering or otherwise using the Property at any time safety may be a concern.

13.0 NON-WAIVER AND RESERVATION OF RIGHTS

13.1 No act or omission by Licensor may constitute or be construed as a waiver of any breach or default of Licensee which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.

13.2 All rights of Licensor under this Agreement are specifically reserved and any act or omission shall not impair or prejudice any remedy or right of Licensor under it. Any right or remedy stated in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement, the law or at equity, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

14.0 VENUE AND CHOICE OF LAW

14.1 The obligations and undertakings of each of the parties to this Agreement are performable in Travis County, Texas, and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.

15.0 NOTICES

15.1 Written Notice. Any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.

15.2 Licensee Address. The address of Licensee for all purposes under this Agreement shall be:

Scott Cobb

15.3 Licensor Address. The address of Licensor for all purposes and all notices under this Agreement shall be:

Honorable Samuel T. Biscoe (or successor in office)
Travis County Judge
P.O. Box 1748
Austin, Texas 78767

15.4 Change of Address. Each Party may change the address for notice to it by giving notice of the change in compliance with this Section.

16.0 MEDIATION

16.1 When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

17.0 SEVERABILITY

17.1 If any portion or portions of this Agreement are ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.

18.0 ENTIRETY OF AGREEMENT

18.1 This Agreement represents the sole, entire and integrated Agreement between County and Licensee with respect to the subject matter herein and supersedes all prior negotiations, representatives, or agreements either oral or written.

IN WITNESS WHEREOF, Licensor and Licensee have duly executed this Agreement effective as of the later date set forth below (the "Effective Date").

TRAVIS COUNTY, TEXAS

LICENSEE:

By: _____
Samuel T. Biscoe
Travis County Judge



Scott Cobb
University of Texas at Austin Film
Student

Date: _____

Date: 3-4-14

Exhibit A

Insurance

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Operations:

The creation, production or publication of films within the scope and nature of a class project assigned by an educator of the name insured.

This insurance applies only to "bodily injury", "property damage" or "personal and advertising injury" arising directly out of the special event(s) designated in the schedule.

Includes copyrighted material of Insurance
Services Office, Inc., with its permission.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT – WHO IS AN INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

- A.** The following amendment is added to Paragraph 2. of **Section II – WHO IS AN INSURED**:
 - f.** Any enrolled University of Texas film student or faculty while off of the named insured premises for the creation, production or publication of films within the scope and nature of a class project assigned by an educator of the name insured listed on the declarations pages.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AUTOMATIC ADDITIONAL INSURED - SPECIFIED
RELATIONSHIPS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION II - WHO IS AN INSURED is amended to include as an insured any person or organization described in Paragraph B. below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract or agreement is an insured, provided:

1. The written contract or agreement is:
 - a. Currently in effect or becomes effective during the policy period; and
 - b. Executed prior to an "occurrence" or offense to which this insurance would apply; and
2. They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

B. Only the following persons or organizations are additional insureds under this endorsement, but only with respect to liability caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf. Insurance coverage provided to such additional insureds is limited as provided herein:

1. The manager or lessor of a premises leased to you with whom you have agreed per Paragraph A. above to provide insurance, but only with respect to the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
- b. Structural alterations, new construction or demolition operations per-

formed by or on behalf of such additional insured.

2. Any person or organization from which you lease equipment with whom you have agreed per Paragraph A. above to provide insurance. However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. Any state or political subdivision with which you have agreed per Paragraph A. above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- a. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- b. The construction, erection, or removal of elevators; or
- c. The ownership, maintenance, or use of any elevators covered by this insurance.

C. With respect to the insurance afforded to these additional insureds, SECTION III - LIMITS OF INSURANCE is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever is less. If no limits are specified in the written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this

Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- D. With respect to the insurance afforded to these additional insureds, **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance** is amended to include:

Any coverage provided herein will be excess over any other valid and collectible insurance

available to the additional insured whether primary, excess, contingent or on any other basis unless you have agreed in a written contract or written agreement executed prior to any loss that this insurance will be primary. This insurance will be noncontributory only if you have so agreed in a written contract or written agreement executed prior to any loss and this coverage is determined to be primary.

Synopsis - Ilyanica:

"Ilyanica" is the third short film we have made about the same two characters. In the first film "Ex Patria", the two characters were 21. In the second film, "The There", they were 30. In the third film, they are in their 40s.

"Ilyanica" is a short film about two American women, now in their 40s, who have been friends since college. They met each other in Berlin, Germany during their year abroad in college 20 years ago. Instead of returning to the U.S. after their junior year abroad, they remained overseas. They have both spent most of their adult lives living outside the U.S. as expatriates. They have gone through many things together over the years. Erica is now a successful European-based American filmmaker, while Ilyana has always struggled to find her place in the world.

Erica believes Ilyana has gotten herself in a difficult situation as a result of her impetuous nature and free spirit. Ilyana has become involved with a group of people occupying the abandoned jail of a closed military installation in Eastern Europe. The base has been scheduled for demolition, but many years ago the CIA used it as a so-called black site to interrogate people they brought there for waterboarding and other torture techniques as part of the Extraordinary Rendition and Detention Program. Erica worries about Ilyana's latest actions, so she comes to visit her at the abandoned facility to see what exactly is going on.